

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

PROPOSED AMENDMENTS TO THE DRAYAGE TRUCK REGULATION

Public Hearing Date: December 7, 2007

Public Availability Date: May 28, 2008

Deadline for Public Comment: June 13, 2008

At its December 7, 2007 public hearing, the Air Resources Board (ARB or Board) adopted Resolution 07-58 approving the adoption of section 2027, title 13, California Code of Regulations (CCR), which establishes requirements designed to reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NOx) from in-use on-road diesel-fueled heavy-duty drayage trucks in port and intermodal rail yard service in California.

At the hearing, ARB staff presented and the Board approved modifications to the regulation originally proposed in the Staff Report released on October 19, 2007, in response to comments received after the Staff Report's publication. The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate (including modifications specified by the Board at the December 7 Board hearing), and to make the modified regulatory language available for a supplemental comment period of 15 days. These modifications are summarized below.

Summary of Proposed Modifications – Substantial Changes

1. Staff modified the labeling and recordkeeping requirements to ensure compatibility with federal law. Specifically, modifications were made to the following sections:
 - Former section (d)(3)(A)(3) and section (d)(5)(A)(3) were modified to delete the requirements that the drayage truck owner and motor carrier had responsibility for affixing a Drayage Truck Registry (DTR) compliance label to the truck.
 - Former sections (d)(3)(A)(6) and (d)(4)(B) were deleted since the regulation no longer requires a maintenance log be kept on the truck.
 - Former section (d)(3)(A)(7) (now section (d)(3)(A)(4)) and former section (d)(5)(A)(4) were modified to no longer mandate that dispatching motor carrier information be kept in the truck. However, the truck driver is still required to be able to impart this information, upon request, to enforcement personnel.
 - Section (d)(6)(A) was modified to no longer require that a terminal or rail

yard check for a DTR label to determine a truck's compliance. This section now requires that a terminal or rail yard check to make sure a truck is DTR compliant without specifying the method on how they conduct such checks.

A terminal or rail yard (as well as the general public) can enter either a truck's license plate number, vehicle identification number (VIN), or Drayage Truck Registry number in the ARB administered Drayage Truck Registry to obtain the compliance status. The compliance status will be displayed as either 'DTR compliant through [Date]' or 'Not DTR compliant' – no personal information will be displayed. The Drayage Truck Registry can be accessed through the following website:
<http://www.arb.ca.gov/drayagetruck>.

Terminals and rail yards are encouraged to use a method to collect truck information that best suits their needs. Possible methods include: manually noting the license plate or VIN number, using optical license plate readers, having drayage trucks install remote sensors and using infrared readers, and / or requiring drayage trucks to use a compliance label.

- Definition (c)(18) was added to define "DTR Compliant".
 - Former sections (c)(8), (e)(1)(E), (e)(4), and (e)(5) that referenced DTR compliance labels were deleted since the regulation no longer requires compliance labels.
2. The definition of a 'port' (former section (c)(32), now section (c)(33)) was changed to exclude port property that is neither related to, nor primarily used to engage in, water-borne commerce. If a port authority dedicates port owned or controlled lands to commercial enterprises that neither receive nor transport ship-borne cargo, activities that occur on such lands by the enterprises or others would not be subject to the regulation. Port owned or controlled land could also be dedicated to environmental efforts, such as marine estuaries. Those properties typically are not easily controlled because of the lack of infrastructure, such as fencing and monitored entrances, typically seen at port and terminal entrances. As the regulation is designed to reduce emissions from drayage trucks transporting ocean-borne cargo, the regulation was modified to minimize the burden on businesses and port lands where ocean-borne commerce does not occur.
 3. The regulatory requirements in Phase 1, Section (d)(1), were modified by adding a compliance option (C) that states that engines meeting the 2007 emission standard will be considered fully compliant. This option was added to clarify that it has always been ARB's intent that vehicles meeting 2007 emission standards are fully compliant with both Phase 1 and Phase 2 of the regulation.

4. The regulatory requirements in Phase 2, Section (d)(2), were modified to require all drayage truck engines (including model years 2004 through 2006) to meet 2007 California or federal emission standards by December 31, 2013. Initially, 2004 through 2006 MY engines were not required to reduce emissions. However, two concerns were raised during the 45 public comment period:

- The need to further reduce emissions from 2004 through 2006 MY engines to alleviate adverse near source health impacts.
- Allowing 2004 through 2006 MY engines as a compliance option could dramatically increase that segment's population and reduce the overall effectiveness of the regulation (i.e. purchasing a 2004 – 2006 truck to avoid Phase 2 regulation requirements).

To address these concerns, staff modified the regulation to require all drayage truck engines (including model years 2004 through 2006) to meet 2007 California or federal emission standards by December 31, 2013 (Phase 2).

5. New Section (d)(3)(A)(2) has been added in place of former sections (d)(3)(A)(4) through (5) to clarify a drayage truck owner's responsibilities when installing a verified diesel emission control strategy (VDECS) on a vehicle. These responsibilities include ensuring that the VDECS is properly installed, functions properly, is repaired or replaced promptly when they malfunction, and is not misused or tampered with.
6. Staff modified Section (d)(6)(A) to require port terminals and rail yards to start collecting non-compliant truck data starting September 30, 2009 rather than January 1, 2009. This data is vital to ARB's enforcement efforts as it identifies all the non-compliant trucks accessing California's ports and rail yards. The modified date now coincides with the deadline by which truck owners must register with the DTR, simplifies regulatory requirements, and eliminates extraneous data collection before September 30, 2009.
7. The definition of "Intermodal Rail Yard" (former section (c)(23), now section (c)(24)) has been modified to include intermodal rail yards located more than 80 miles from the nearest port, if they have, after January 1, 2008, 100 or more average daily drayage truck visits in any one month. Once a rail yard exceeds the 100 visit threshold, it will be subject to the regulation, regardless of falling below that threshold in any subsequent monthly period. This change was made at the Board's direction to address concerns of potential circumvention of the regulation's requirements by moving drayage operations to intermodal facilities located just outside the 80 mile radius.

Subsequent to the Board hearing, staff performed an analysis of intermodal rail facilities located more than 80 miles from a port to better understand the impact of including these facilities under the regulation. Staff then performed a detailed

risk analysis on the largest of these facilities, the Fresno BNSF rail yard, to estimate the worst case impact to nearby communities. The analysis included an assessment of the health risk to local communities and a review of the rail yard's activities, and showed:

- The health risk is less than 10 in a million from drayage truck emissions to nearby communities.
- The rail yard is open seven days a week and has an average of 84 visits per day.
- The rail yard handles only agricultural products with no port-related containers.
- Thirty-five percent of the trucks servicing the facility are model year 2004 or newer.
- A large segment of the trucks that service the Fresno BNSF facility also visit other ports or intermodal rail yards.

There are presently less than 100 drayage truck visits per day at the Fresno BNSF rail yard, and, as Fresno BNSF is the largest rail facility, staff believes all intermodal rail yards located more than 80 miles from a port would not be subject to regulatory requirements at this time.

However, to protect against future growth at these rail yards, potentially reducing the regulation's effectiveness, the regulation will require drayage trucks servicing these facilities to meet all regulation requirements – once the 100 truck limit is reached.

8. Staff added rail yard authority reporting requirements to section (d)(7)(C). The reporting requirements will provide the ARB with a drayage truck tracking mechanism to determine if and when the smaller rail yards exceed the average 100 daily truck visits and would be required to comply with regulatory requirements.
9. Staff added the Average Daily Drayage Truck Visit definition to section (c)(4), which explains how to calculate the Average Daily Truck Visit requirement covered in item 7 above.

Summary of Proposed Minor Changes

1. Staff renamed Section 2027 title from "Purpose and Definitions of Control Measure" to "In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks". The title was changed for clarity and to briefly summarize the type of trucks covered by the regulation.

2. Staff modified definition of former section (c)(23), now (c)(24), "Intermodal Rail Yard", to clarify that the regulation only applies to rail yards owned or operated by Class 1 railroads since only these railroads operate intermodal rail yards in California.
3. Staff modified the definition of former section (c)(34), now (c)(35), "Port Property" to clarify that the regulation applies to all properties within a port whether publically or privately owned. This definition was modified to avoid the possible loophole of land ownership change to avoid complying with the requirements of the regulation.
4. Staff corrected the numbering hierarchy in (d)(3), (5), (6), and (e)(1).

Attachment 1 to this notice contains the proposed regulatory text with modifications. All additions to the regulation are shown by single underline and deletions by ~~single strikethrough~~.

The regulatory documents for this rulemaking, including the Board Resolution 07-58 approving section 2027, title 13, California Code of Regulations (CCR), as modified, are available online at the following ARB internet site:
<http://www.arb.ca.gov/regact/2007/drayage07/drayage07.htm>.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt section 2027, title 13, CCR, after making it available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if warranted.

Written comments on the modifications may be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact

information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulation will be considered by the Executive Officer.

Attachment